

NEBRASKA ADMINISTRATIVE CODE

Title 69 - Department of Correctional Services

Chapter 3 - Policies Against Workplace Harassment

001 Applicability. The provisions of this rule shall apply to all employees of the Department of Correctional Services.

002 Department Policy. This department subscribes to a policy of non-discrimination in all elements of the working environment within corrections. This policy is applicable to all non-merit principles including race, color, sex, religion, national origin, age, marital status or disability.

Work place harassment shall be defined as "unlawful employment practices," and shall include those actions on the part of employees which create an intimidating or offensive environment within the department. More specifically, any verbal or physical conduct of a discriminatory nature involving race, color, sex, religion, national origin, marital status, age or disability will be in violation of this policy.

002.01 Supervisor's Responsibility. Work place harassment can and does create a negative work environment which will affect productivity, efficiency, work attendance and turnover of staff. In addition, allegations of work place harassment which are not appropriately responded to by the agency may place the State of Nebraska in a position of potential liability to the victim of such work place harassment. Supervisory personnel must take all work place harassment complaints seriously and the agency shall act immediately to investigate and resolve all such complaints in accordance with the following procedures.

002.02. Reporting of Complaint.

002.01A. Receipt. Any supervisor who receives a complaint alleging work place harassment or who is otherwise aware of a situation involving work place harassment shall be required to immediately report that complaint or situation, in writing, to the CEO. The CEO shall immediately report this information to the Director through the Department Contact person.

002.01B. Failure to Report. Any failure by a supervisor to report such work place harassment complaints or situations shall be considered to be in violation of this policy and shall subject the supervisor to appropriate corrective or disciplinary action.

(New Promulgated Rule)

002.01C. Complainant Notification of Policy. Any supervisor receiving a complaint alleging work place harassment shall also be obligated to immediately notify the complainant of the agency's policy concerning work place harassment and of the complainant's rights concerning the pursuit of such allegations, as set forth in this policy.

002.01D. Confidentiality. Except as otherwise provided by this policy, any supervisor receiving a complaint or report of work place harassment shall take proper care to protect the identity of the complainant or complainants and of the accused party or parties and shall endeavor to hold the allegations of work place harassment in confidence pending appropriate action by the agency.

002.03. Investigation Procedures.

002.03A. Initiation of Investigation. In the event that the agency head or Department contact receives a report of alleged work place harassment, the agency head or Department contact shall immediately take all necessary steps to ensure that the report is promptly and thoroughly investigated by the agency. The agency head or Department contact will approve the appointment of an investigating officer.

002.03B. Informal Resolution. At the complainant's request, the investigating officer may seek informal resolution of the complaint by bringing the offensive behavior to the attention of the accused party or parties and by securing agreement that the behavior will not be repeated. If such informal resolution is accomplished, and no further investigation is required, then the investigating officer shall submit a report to the agency head through the Department contact. If the offending party or parties denies the allegation, or if an informal resolution of the matter cannot be achieved, then the investigating officer shall complete the steps outlined below.

002.03C. Complainant Notification of Policy. The investigating officer must make certain that the complainant has been advised of the agency's policy concerning work place harassment and of the complainant's rights concerning pursuit of such allegations.

002.03D. Confidentiality. Except as otherwise provided by this policy, and except as may be reasonably necessary to successfully complete an investigation of work place harassment allegations, the investigating officer shall take care to protect the identity of the complainant or complainants and of the accused party or parties, and shall endeavor to hold the allegations of work place harassment in confidence pending action by the agency.

002.03E. Notification of Director / Department Contact. Prior to the completion of the investigation, the investigating officer shall consult with the agency head or Department contact concerning the progress of the investigation.

002.03F. Written Report. Upon completion of the investigation, the investigative officer shall prepare a written report stating the findings of the investigation and, where appropriate, making recommendations regarding corrective action to be taken against the accused party or parties. The investigating officer shall submit the written report to the agency head through Department contact, and shall also notify the complainant of his or her findings.

002.03G. Director Disposition. Upon completion of any follow-up as considered necessary, the agency head shall render a final decision regarding the complaint and specify disciplinary action(s), if any, that is (are) to be taken.

002.03H. Documentation. Documentation pertaining to the complaint and investigation, including the report of the investigating officer, shall be maintained by the agency in a separate investigation file.

002.04. Corrective Action.

If upon investigation an allegation of work place harassment is found to be substantiated, the agency head shall take appropriate corrective action against the employee or employees found responsible for such work place harassment. This corrective action may consist of verbal counseling of the employee or employees responsible or may consist of disciplinary action as outlined in Chapter 13 of the State of Nebraska Classified Systems Personnel Rules and Regulations and Article 10 of the Labor Contract between the State of Nebraska and the Nebraska Association of Public Employees. If the complainant so requests, a statement of the findings of fact and whether or not corrective action was issued shall be provided to the complainant.

002.05. Rights of Complainants.

002.05A. Right to Report. In the event that any employee of this agency or recipient of services provided by this agency believes that he or she has been or is being subjected to work place harassment, that party shall have the right to report such alleged work place harassment to the agency for purposes of prompt investigation and appropriate action.

002.05B. Direct Request to Stop. Any employee or recipient of services who believes that he or she is being subjected to work place harassment is encouraged to directly inform the offending person or persons that such conduct is offensive and must stop.

002.05C. Reporting of Allegations.

002.05C(1). If the aggrieved person does not wish to communicate directly with the offending person or persons, or if direct communication has been ineffective, then the aggrieved person is encouraged to immediately report the alleged work place harassment to his or her supervisor, to the agency head or to the Department contact within the agency designated to receive complaints of work place harassment.

002.05C(2). In reporting allegations of work place harassment, complainants should take care to state specific facts including, wherever practical, the identity of the person or persons who committed such work place harassment, the date, time and place of the alleged harassment, what was done or said, and the identity of any witnesses who were present.

002.05C(3). Any aggrieved person who is uncertain how to report complaints of alleged work place harassment may contact any agency supervisor or the Department contact, the State Affirmative Action Office, Commission on the Status of Women, Nebraska Equal Opportunity Commission or State Ombudsman for assistance in reporting such complaints.

002.05D. Internal Investigation.

002.05D(1). An employee of the agency shall be designated as an

investigative officer to investigate the complainant's allegation of work place harassment. Upon completion of the investigation, the investigative officer shall prepare a report, in writing, stating the findings of the investigation and, where appropriate, recommendations regarding corrective actions to be taken against the accused party or parties.

002.05D(2). Upon completion of the Director's review of that report, the Departmental contact or designee shall consult with the complainant regarding the findings and recommendations.

002.05D(3). If the complainant so requests, then a statement of the findings of fact and whether corrective/disciplinary action will be administered shall be provided to the complainant.

002.05E. Independent Investigation. If the complainant is dissatisfied with the agency's action in response to a complaint of work place harassment, the complainant may contact the State Affirmative Action Office for the purpose of requesting that office to conduct an independent investigation of the allegation of work place harassment.

002.06. NEOC/EEOC Complaints. Persons who wish to report allegations of work place harassment also have the right, at any time, to file a complaint of work place harassment with the Nebraska Equal Opportunity Commission (NEOC) and/or the Federal Equal Employment Opportunity Commission (EEOC). It is neither necessary nor required that an employee of the agency file a charge of work place harassment with the agency before filing a formal complaint with the Nebraska Equal Opportunity Commission or with the federal Equal Employment Opportunity Commission.